

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

June 17, 2002

**RESPONSIBLE STAFF:**

Trudy Schwarz, Senior Planner

**AGENDA ITEM:**

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
X	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

Introduced	06/17/02
Advertised	
Hearing Held	
Record Held Open	
Policy Discussion	

**TITLE:**

Introduction of Ordinance, Abandonment Application AB-54, An Ordinance to Conditionally Abandon 0.0093 Acres or 403 sq. ft. of Land Dedicated for Right of Way for Meem and West Diamond Avenues, situated in the subdivision known as Meem's Addition, in the City of Gaithersburg, Montgomery County, Maryland

**SUPPORTING BACKGROUND:**

Attached is the proposed ordinance to conditionally abandon this small portion of right-of-way at the intersection of Meem and West Diamond Avenues. In 1990 this area was dedicated as part of an office development proposal on the property, which called for demolition of the existing house. See Exhibits #4 and #5. The development was never built nor was the house demolished. This has created a cloud on the title of the property because a portion of the house is in the right of way. The owner and his representative have been working with City staff and the State of Maryland to resolve this issue by conditionally abandoning a portion of the right of way until there is further development on the property.

The public hearing for this abandonment will be scheduled for the Mayor and City Council Meeting on July 1, 2002.

**DESIRED OUTCOME:**

**Introduce the Ordinance**



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO CONDITIONALLY ABANDON 0.0093 ACRES OR 403 SQUARE FEET OF LAND DEDICATED FOR THE RIGHT-OF-WAY FOR MEEM AND WEST DIAMOND AVENUES, SITUATED IN THE SUBDIVISION KNOWN AS MEEM'S ADDITION TO GAITHERSBURG, IN THE CITY OF GAITHERSBURG, MONTGOMERY COUNTY, MARYLAND

**ABANDONMENT AB-54**

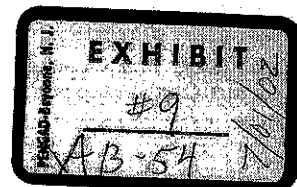
WHEREAS, the applicants, James Y. and Wen-Min C. Kao; as proper parties to initiate this abandonment, applied pursuant to Article III of Chapter 19 of the City of Gaithersburg Code for the abandonment of a portion of property dedicated to public use as recorded in Plat Book 157 at Plat No. 17870, and dedicated by plat of subdivision known as "Lot 42, Meem's Addition to Gaithersburg"; recorded among the Montgomery County Land Records; and

WHEREAS, the area of abandonment includes a portion of land in the Ninth (9<sup>th</sup>) Election District of Montgomery County, Maryland and being a part of Meem Avenue, as dedicated to public use on a plat of subdivision entitled "LOT 42, MEEM'S ADDITION TO GAITHERSBURG" and recorded in the Land Records of Montgomery County, Maryland in Plat Book 157 at Plat No. 17870 and a shown in "Exhibit A", attached hereto and being, said piece or parcel of land being more particularly described as follows in Washington Suburban Sanitary Commission Datum by Winfield Vinning, Jr., PLS.:

Beginning at a point lying on the southwesterly right-of-way line of said Meem Avenue, said point lying at the at the beginning of the South 02° 44' 16" West 43.10 foot line of Lot 42 of said Plat No. 17870; thence with the southeasterly extension of said right-of-way line

1. South 56° 48' 33" East, 12.76 feet; thence leaving said extension and parallel with said 43.10 foot line
2. South 02° 44' 16" West 30.17 feet; thence
3. South 52° 17' 06" West, 12.76 feet to a point on the northwesterly right-of-way line of West Diamond Avenue as shown on aforesaid Plat No. 17870, said point lying at the end of aforesaid 43.10 foot line; thence reversely with said line
4. North 02° 44' 16" East, 43.10 feet to the point of beginning,

Containing 403 square feet or 0.0093 acres of land (hereinafter, "The Property").



WHEREAS, the computed area of the right-of-way to be abandoned is approximately 403 square feet or 0.00093 acres; and

WHEREAS, the Mayor and City Council finds that the existing right-of-way is no longer necessary for present vehicular, pedestrian, or other right-of-way use by the general public, and does not provide the sole means of ingress and egress to any property; and

WHEREAS, the Mayor and City Council finds that there are no existing easements necessary for present use; and

WHEREAS, the Mayor and City Council finds that in accordance with the position of the Maryland State Highway Administration, that dedication at least to the extent of the current dedication will be required if the property is redeveloped in the future; and

WHEREAS, the Mayor and City Council finds the owners agree to donate free of charge the present dedicated land to the Maryland State Highway Administration, if and when it is needed for a future public project, or improvements; and

WHEREAS, a duly advertised public hearing on said application was held by the Mayor and City Council, and the City Planning Commission have submitted a recommendation supporting the abandonment to the Mayor and City Council; and

WHEREAS, the Mayor and City Council have received comments concerning the abandonment request in a letter dated December 6, 2001 from Maryland State Highway Administration; and

WHEREAS, the Mayor and City Council have received no request for further hearings on this matter, and there have been no objections to the abandonment; and

WHEREAS, the Mayor and City Council have concluded that no further hearings are necessary to resolve this matter:

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of Gaithersburg, Maryland, in a public meeting assembled, finds that the above described area dedicated to public right-of-way use containing 0.0093 acres or 403 square feet of land is no longer necessary for present public use for right-of-way purposes, that the area does not provide the sole means of ingress/easement to any property and hereby declares said property to be abandoned, vacated and released subject to the following citations:

(1) The applicants, applicants' successors or assigns shall rededicate to public use to the extent of the current dedication if the applicants' property is redeveloped in the future or if the State of Maryland requires the property for future right-of-way improvements.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2002. APPROVED/VETOED by the Mayor of the City Council of Gaithersburg, this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
**SIDNEY A. KATZ**

Mayor and President of the City Council

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of the City of Gaithersburg, in public meeting assembled, on the \_\_\_\_\_ day of \_\_\_\_\_, 2002, and the same was (Approved/Vetoed) by the Mayor on the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

This Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
David B. Humpton, City Manager

Mayor and City Council  
July 1, 2002

INDEX OF MEMORANDUM  
**AB-54**

No.

- 1) Application for AB-54
- 2) Receipt of Application Fee for AB-54
- 3) Metes and Bounds Description of Abandonment Area
- 4) Sketch of abandonment request
- 5) Plat of Lot 42, Meem's Addition to Gaithersburg
- 6) Letter, dated December 6, 2001, from Richard Ravenscroft, State Highway Administration
- 7) Letter, dated March 11, 2002, from James Clifford, Esq.
- 8) Letter, dated March 15, 2002, from Richard Ravenscroft, SHA
- 9) Ordinance of Abandonment AB-54
- 10) Mayor and City Council Cover Sheet for June 17, 2002 meeting

## ABANDONMENT OF PUBLIC RIGHTS-OF-WAY AND EASEMENTS

In accordance with Chapter 19, Article III,  
Section 19-18 thru 27 of the City Code

Application Number	<u>AB-54</u>
Filing Date	<u>Aug 23, 2001</u>
Fee Paid	<u>\$230.00</u>
Legal Ad	<u>6/19/02</u>
P.C. Review	<u>6/19/02</u>
M&C Review	<u>7/01/02</u>
Decision	_____
Date of Decision	_____
Effective Date	_____

Lot 42, "MEEM'S ADDITION  
SUBJECT PROPERTY TO GAITHERSBURG" TAX ACCOUNT NO. 9-211-2878978  
LOCATION 100 West Diamond Avenue, Gaithersburg, Maryland 20877

### ABANDONMENT OF

☒ DEDICATED STREET    ☐ ALLEY    ☐ UTILITY    ☒ EASEMENT    ☐ OTHER \_\_\_\_\_

WIDTH \_\_\_\_\_ FEET    LENGTH \_\_\_\_\_ FEET    TOTAL SQ. FT./ACREAGE 403 sq.ft

REASON FOR REQUEST TO ABANDON The existing 10' P.U.E. and P.I.E. and  
the existing dedication for Meem Avenue and West Diamond Avenue interferes  
with the full use of the existing brick and frame structure located on said  
Lot 42.

### APPLICANTS

1. NAME James Y. Kao TELEPHONE (301) 299-5536

ADDRESS 11156 Powder Horn Drive, Potomac, Maryland 20854

LOT 9 BLOCK B SUBDIVISION WILLOWBROOK TAX ACCOUNT NO. 10-00890478

2. NAME Wen- Min C. Kao TELEPHONE (301) 299-5536

ADDRESS 11156 Powder Horn Drive, Potomac, MD 20854

LOT 9 BLOCK B SUBDIVISION WILLOWBROOK TAX ACCOUNT NO. 10-00890478

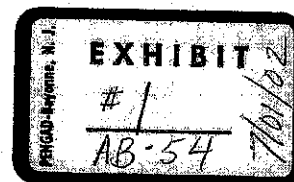
3. NAME \_\_\_\_\_ TELEPHONE \_\_\_\_\_

ADDRESS \_\_\_\_\_

LOT \_\_\_\_\_ BLOCK \_\_\_\_\_ SUBDIVISION \_\_\_\_\_ TAX ACCOUNT NO. \_\_\_\_\_

### SUBMISSION REQUIREMENTS

- ☐ Survey with vicinity map.
- ☐ Metes and bounds description.
- ☐ Written consent of owner if applicable.
- ☐ Required fee (fee schedule available at the Planning Department).
- ☐ Record plat (if required).



continued on reverse side

ADJACENT PROPERTY OWNERS OF SUBJECT AREA

THOMAS F. MASCARI

ROBERT W. MASCARI

1. NAME MAGGOTRICE PARTNERS

ADDRESS 5 Meem Avenue  
Gaithersburg, MD 20877-2117

TAX ACCOUNT NO. \_\_\_\_\_

2. NAME CITY OF GAITHERSBURG

ADDRESS 31 South Summit Avenue  
Gaithersburg, MD 20877

TAX ACCOUNT NO. \_\_\_\_\_

3. NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TAX ACCOUNT NO. \_\_\_\_\_

4. NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TAX ACCOUNT NO. \_\_\_\_\_

5. NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TAX ACCOUNT NO. \_\_\_\_\_

6. NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TAX ACCOUNT NO. \_\_\_\_\_

If the right-of-way provides the only access to a property, the applicant shall provide written consent of that property owner along with his name and address specifically identified here:

NAME N/A

ADDRESS \_\_\_\_\_

SIGNATURES OF SPONSORING APPLICANTS

1. Signature \_\_\_\_\_

Date \_\_\_\_\_

2. Signature \_\_\_\_\_

Date \_\_\_\_\_

3. Signature \_\_\_\_\_

Date \_\_\_\_\_



Metes and Bounds Description  
Of  
**Part of Meem Avenue**  
City of Gaithersburg  
Election District No. 9  
Montgomery County, Maryland

July 3, 2001

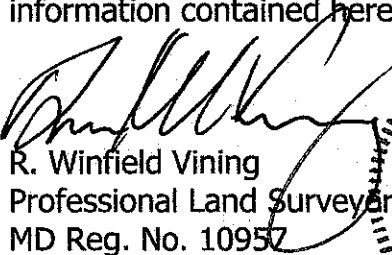
Being a piece or parcel of land lying and situate in the City of Gaithersburg, Ninth Election District, Montgomery County, Maryland, being a part of Meem Avenue, as dedicated to public use on a plat of subdivision entitled "LOT 42, MEEM'S ADDITION TO GAITHERSBURG" and recorded in the land records of Montgomery County, Maryland in Plat Book 157 at Plat No. 17870, said piece or parcel of land being more particularly described as follows:

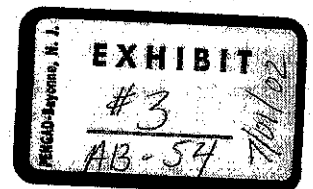
Beginning at a point lying on the southwesterly right-of-way line of said Meem Avenue, said point lying at the at the beginning of the South 02° 44' 16" West 43.10 foot line of Lot 42 of said Plat No. 17870; thence with the southeasterly extension of said right-of-way line

1. South 56° 48' 33" East, 12.76 feet; thence leaving said extension and parallel with said 43.10 foot line
2. South 02° 44' 16" West 30.17 feet; thence
3. South 52° 17' 06" West, 12.76 feet to a point on the northwesterly right-of-way line of West Diamond Avenue as shown on aforesaid Plat No. 17870, said point lying at the end of aforesaid 43.10 foot line; thence reversely with said line
4. North 02° 44' 16" East, 43.10 feet to the point of beginning,

Containing 403 square feet or 0.0093 acres of land.

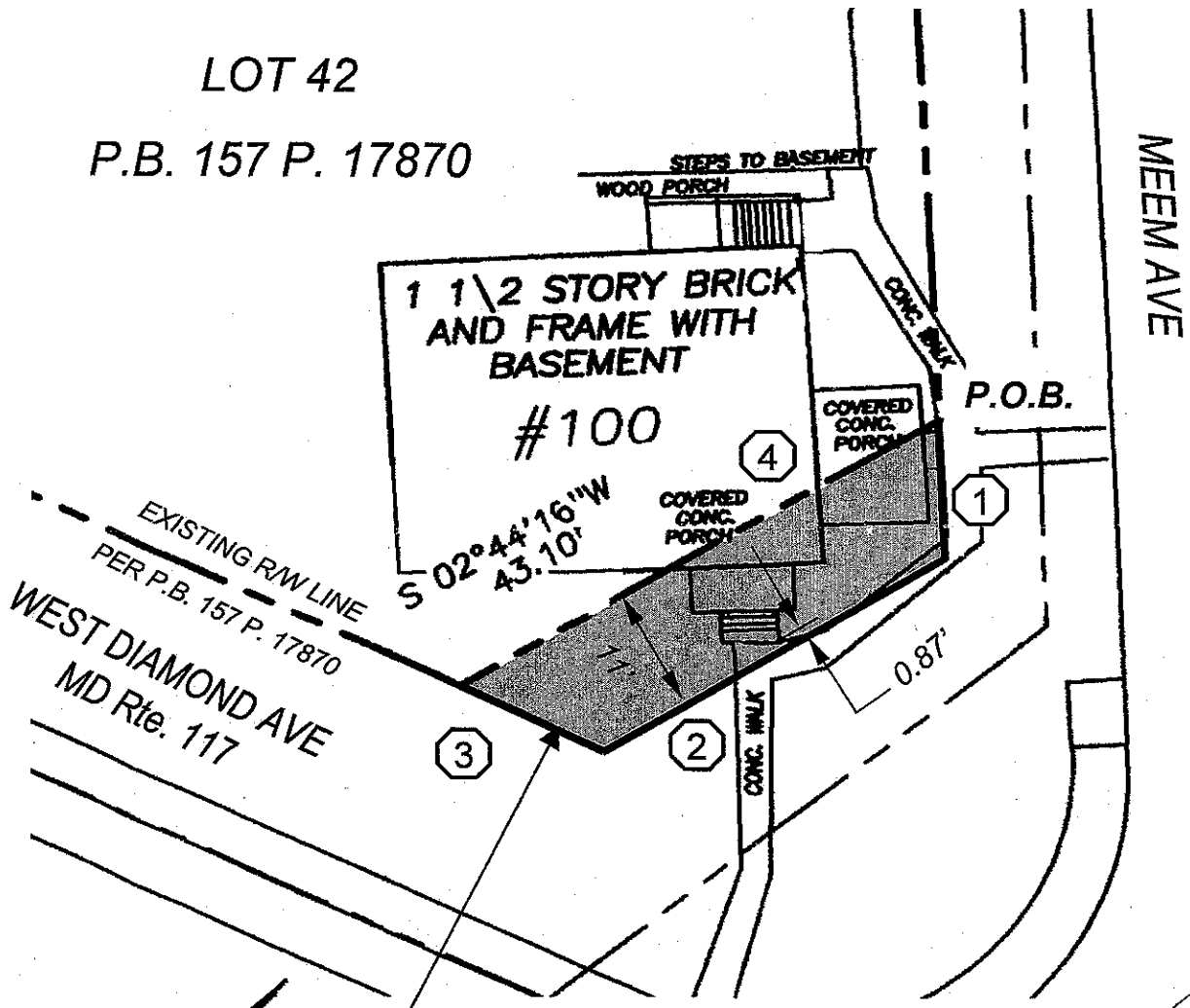
I hereby certify that this legal description and accompanying plat were prepared in conjunction with a survey performed under my direct supervision, and that the information contained herein is correct, to the best of my professional ability.

  
R. Winfield Vining  
Professional Land Surveyor  
MD Reg. No. 10957

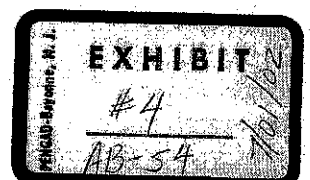


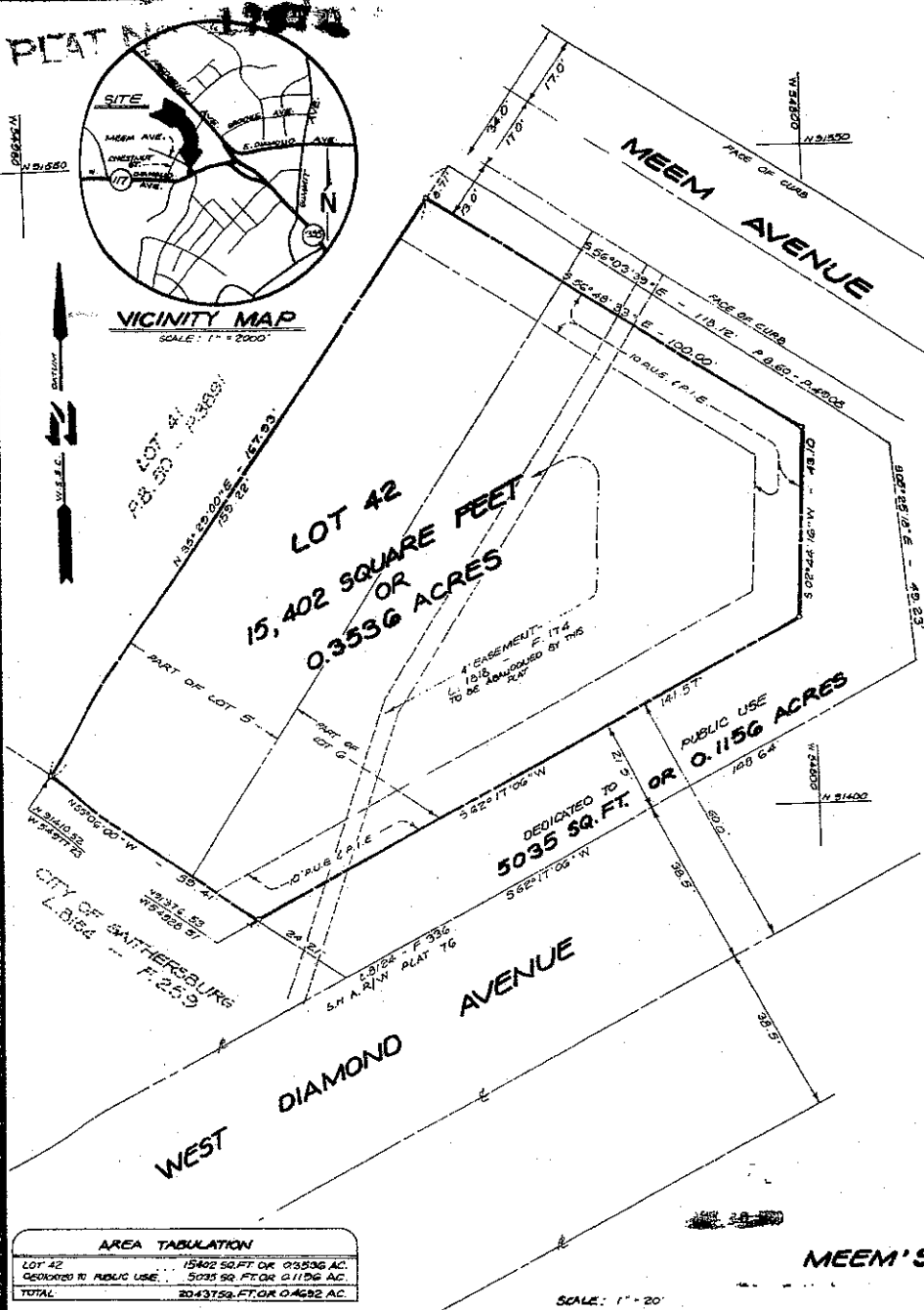
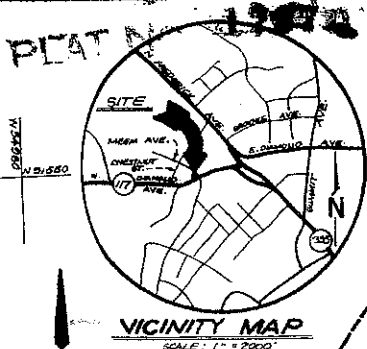
LOT 42

P.B. 157 P. 17870



LINE	BEARING	DIST
1	South 56° 48' 33" East	12.76'
2	South 02° 44' 16" West	30.17'
3	South 52° 17' 06" West	12.76'
4	North 02° 44' 16" East	43.10'





**SURVEYOR'S CERTIFICATE**

I HEREBY CERTIFY THAT THE PLAN SHOWN HEREON HAS BEEN PREPARED IN A PROFESSIONAL MANNER THAT IT IS A SUBDIVISION OF PART OF LOTS 5 AND 6 IN MEEM'S ADDITION TO GAITHERSBURG, RECORDED IN PLAT BOOK 2 PLAT 131 AMONG THE LAND RECORDS FOR MONTGOMERY COUNTY, MARYLAND, ALSO BEING PART OF THE LAND CONVERTED FROM JAMES Y. KAG AND KEN-NIN C. KAG TO STEPHEN S. TENNANT BY DEED DATED 25 MAY 1989 AND RECORDED IN LIBER 1805 FOLIO 458 AMONG SAID LAND RECORDS.

DATE: 10-10-1990  
 Eric V. Day  
 PROFESSIONAL LAND SURVEYOR  
 MARYLAND REGISTRATION NUMBER 10773

**OWNERS DEDICATION**

I, THE UNDERSIGNED, OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON, HEREBY ADOPT THIS PLAN OF SUBDIVISION, ESTABLISH THE NEIGHBORHOOD BUILDING RESTRICTION LINES AND DEDICATE THE STREETS TO PUBLIC USE, AS SHOWN HEREON.

FURTHER I GRANT TO POTOMAC ELECTRIC POWER COMPANY, CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF MARYLAND AND THE WASHINGTON GAS LIGHT COMPANY, A PUBLIC UTILITIES EASEMENT AS SHOWN HEREON (P.U.E.) IN ACCORD WITH THE DECLARATION OF TERMS AND PROVISIONS OF PUBLIC UTILITIES BASEMENTS RECORDED IN LIBER 3094 AT FOLIO 457 AMONG THE LAND RECORDS FOR MONTGOMERY COUNTY, MARYLAND.

FURTHER I GRANT TO THE CITY OF GAITHERSBURG, MARYLAND, ITS SUCCESSORS, AGENTS AND ASSIGNS, A PUBLIC IMPROVEMENTS EASEMENT AS SHOWN HEREON (P.I.E.) IN ACCORD WITH TERMS AND PROVISIONS OF THAT CERTAIN DOCUMENT ENTITLED "DECLARATION OF EASEMENT" RECORDED IN LIBER 3117 AT FOLIO 517 AMONG THE APREMENTIONED LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND.

THERE ARE NO SUITS, ACTIONS AT LAW, MORTGAGES, LIENS OR TRUSTS ON THE PROPERTY INCLUDED IN THIS PLAN OF SUBDIVISION EXCEPT A CERTAIN MORTGAGE AND ALL PARTIES IN INTEREST THEREIN HAVE INDICATED THEIR ASSENT BY AFFIXING THEIR SIGNATURES HEREON.

WITNESSES: *Stephen S. Tennant* DATE: 10/10/90  
*John G. Kuo* DATE: 10/10/90  
 WITNESS: *John G. Kuo* DATE: 10/10/90

**NOTE:**

1. THE APPROVAL OF THIS PLAT IS PREDICATED ON THE AVAILABILITY AND ADEQUACY OF PUBLIC WATER AND SEWER.
2. THE ZONING DESIGNATION FOR THIS LAND IS NR. EXISTING USE IS CON-SERVATION.
3. SUBJECT TO THE FOLLOWING RECORDED EASEMENTS AND RIGHTS-OF-WAYS: CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, LIBER 505 FOLIO 217, CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, LIBER 218 FOLIO 252, LIBER 1708 FOLIO 235, LIBER 1916 FOLIO 174, LIBER 1712 FOLIO 418, MONTGOMERY COUNTY, LIBER 814 FOLIO 355.

AREA TABULATION	
LOT 42	15402 SQ.FT. OR 0.3536 AC.
DEDICATED TO PUBLIC USE	5035 SQ. FT. OR 0.1156 AC.
TOTAL	20437 SQ. FT. OR 0.4692 AC.

FOR PUBLIC WATER AND SEWER SYSTEMS ONLY

GAITHERSBURG CITY PLANNING COMMISSION

APPROVED: MAY 2, 1990

*Robert M. Swanson* CHAIRMAN  
*David W. L. [Signature]* SECRETARY

RECORDED \_\_\_\_\_

PLAT BOOK \_\_\_\_\_

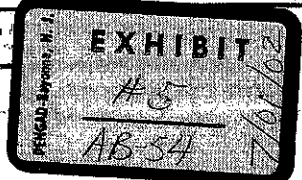
PLAT NO. \_\_\_\_\_

**PLAT OF SUBDIVISION  
 LOT 42  
 MEEM'S ADDITION TO GAITHERSBURG**

ELECTION DISTRICT 9  
 CITY OF GAITHERSBURG  
 MONTGOMERY COUNTY, MARYLAND

SCALE: 1"=20' DATE: OCTOBER 1990

**DENBERRY & DAVIS**  
 ARCHITECTS - ENGINEERS - PLANNERS - SURVEYORS  
 804 WEST DIAMOND AVENUE  
 GAITHERSBURG, MARYLAND 20878  
 TEL. (301) 948-8300

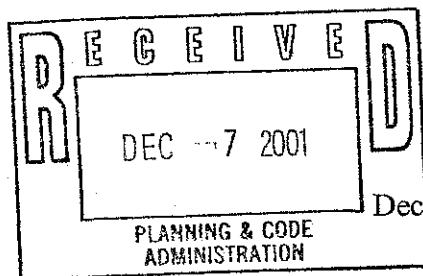




**Maryland Department of Transportation  
State Highway Administration**

Parris N. Glendening  
Governor  
John D. Porcari  
Secretary  
Parker F. Williams  
Administrator

Office of District Engineer  
State Highway Administration  
9300 Kenilworth Avenue  
Greenbelt, Maryland 20770



December 6, 2001

Mrs. Trudy Schwarz, Planner  
City of Gaithersburg  
31 South summit Avenue  
Gaithersburg, MD 20877

Dear Mrs. Schwartz:

Thanks for your inquiry concerning abandonment of the dedication of right of way on the Kao property located at 100 Meem Avenue in Gaithersburg. I discussed this situation with Charlie K. Watkins, District Engineer and we determined that we could agree to the abandonment under certain conditions.

The conditions we propose are:

1. Dedication to at least the extent of the current dedication will be required if the property is redeveloped in the future.
2. After abandonment, the present dedicated land will be donated free of charge to the State, if and when it is needed for a future project.
3. If the State needs to remove the present building for a project, the State will pay for the building.
4. The State will not be obligated to pay damages if the building is taken or if land is taken in the future.
5. The conditions stated in paragraph 2,3 & 4 above are in effect only as long as the property remains in the same state of development as it is on the day of abandonment, if the property is redeveloped then paragraph 1. Governs.

Thanks again for the opportunity to comment.

Sincerely,

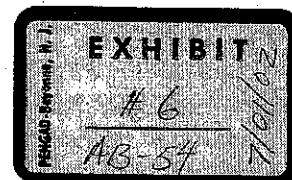
Richard Ravenscroft, chief  
R/W District No. 3

CC: Charlie K. Watkins

Greg Cooke My telephone number is 1-800-749-0737

Maryland Relay Service for Impaired Hearing or Speech  
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717  
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

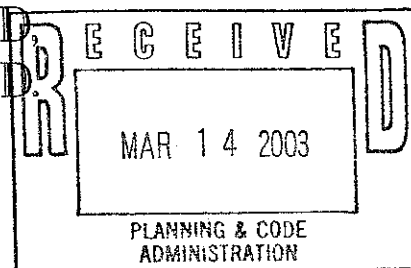


CLIFFORD, DEBELIUS, CRAWFORD  
BONIFANT & FITZPATRICK, CHTD.

ATTORNEYS AT LAW  
Olde Towne Professional Park  
320 East Diamond Avenue  
Gaithersburg, Maryland 20877-3016

James R. Clifford, Sr. (MD, VA)  
James J. Debelius (MD)  
Gary L. Crawford (MD, DC)  
James A. Bonifant (MD)  
E. Joseph Fitzpatrick, Jr. (MD, DC, TN)

(301) 840-2232  
fax (301) 975-9829



John W. Debelius (1926-1984)

March 11, 2002

Richard Ravenscroft, Chief  
Maryland Department of Transportation  
State Highway Administration  
Office of District Engineer  
9300 Kenilworth Avenue  
Greenbelt, MD 20770

Re: Abandonment of 100 Meem Avenue,  
Gaithersburg, Maryland

Dear Mr. Ravenscroft:

I have received a copy of your letter to Trudy Schwarz, Planner for the City of Gaithersburg, dated December 6, 2001. Upon a review of the letter, I am unclear as to whether or not there is a conflict between items 3 and 4. I am enclosing a copy of the letter for your reference. I would appreciate a letter of explanation or a telephone call, if that is better for you, to explain how these to items relate.

Thank you. I look forward to hearing from you.

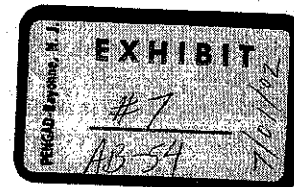
Sincerely,

CLIFFORD, DEBELIUS, CRAWFORD,  
BONIFANT & FITZPATRICK, CHTD.



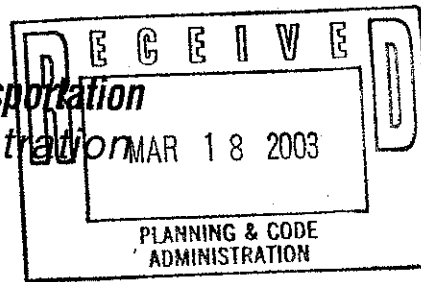
JAMES R. CLIFFORD, SR., ESQ.

JRC/dlh  
enclosure  
cc: Trudy Schwarz  
G:\DATA\DCD\REALEST\Kao\DOT 3 11 02.wpd





**Maryland Department of Transportation**  
**State Highway Administration**



Parris N. Glendening  
Governor  
John D. Porcari  
Secretary  
Parker F. Williams  
Administrator

Office of District Engineer  
State Highway Administration  
9300 Kenilworth Avenue  
Greenbelt, Maryland 20770

March 15, 2002

James R. Clifford, Sr., Esq.  
Clifford, Debelius, Crawford,  
Bonifant & Fitzpatrick, Chtd.  
320 East Diamond Avenue  
Gaithersburg, MD 20877-3016


Dear Mr. Clifford:

Thank you for your letter concerning the Kao property at 100 Meem Avenue, Gaithersburg. I will try to clarify my comments in the December 6, 2001 letter to Trudy Schwarz.

I assume that you have no objection to the text in condition number 3. Condition number 4, is intended to prevent the owner from claiming severance damages to the remaining property in the event that the building and/ or land is acquired. It is conceivable that a future taking could be held to damage the remaining property by reducing the area to where certain uses are not possible. The size of a replacement commercial building is a function of the size of the lot, parking and building setbacks figure in these calculations. There is also no guarantee that a replacement building could be built after a future taking.

The underlying philosophy guiding my thoughts is that the State should not be penalized in any way by being cooperative. I trust this explanation is satisfactory.

Sincerely,

  
Richard Ravenscroft, Chief  
Right of Way District No. 3

CC: Charlie K. Watkins  
Gregg Cooke  
Trudy Schwarz ✓

My telephone number is 1-800-749-0737

Maryland Relay Service for Impaired Hearing or Speech  
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Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

